PUBLIC PROSECUTOR v. YEOW FAH CHEONG & ANOR.

[A.Cr.J. (Wan Suleiman J.) September 23, 1970]

[Alor Star — Kedah Criminal Reference No. 1 of 1970]

Animals and Birds — Infection — Declaring State to be infected area — Disease among animals in another State — Prohibition of removal of animals or birds — Order made to prohibit movement of pigs or any part thereof — Order ultra vires the Ordinance — Animals Ordinance, 1953, ss. 36(1) & 72.

Interpretation — "Animals" or "birds" — Meaning of.

Section 36(1) of the Animals Ordinance gives the Mentri Besar if he has reasonable cause to believe that there is any disease amongst animals or birds in a State power to declare such State or part of such State to be an infected area and to prohibit the removal into or out of such area of any animals or birds. In purported exercise of this power the Mentri Besar of Perlis made an order stating that swine fever exists among pigs in Kedah and declaring the State of Perlis to be an infected State and prohibiting the movement of pigs or any part thereof within into or out of Perlis. The accused in this case was charged with moving seven halves of slaughtered swines from Perlis into Kedah.

Held: the order was *ultra vires* the Animals Ordinance as the preamble to the order clearly showed that there was reasonable ground to believe that the disease existed only in Kedah not in Perlis and as it purported to make it an offence to move not only pigs but any part thereof. The word "animals" or "birds" in section 36(1) of the Animals Ordinance refer only to live animals or birds and not to carcases.

CRIMINAL REFERENCE.

Wan Suleiman J.: The subjects of this order of revision were charged as follows: —

"That you on the 28th day of July, 1970 at about 4.15 a.m. in front of the Police Station, Jitra in the district of Kubang Pasu, State of Kedah, moved seven (7) halves slaughtered swines, to wit, by means of a motor car No. R 886, from the State of Perlis into the State of Kedah which is contrary to the order made by the Menteri Besar of Perlis vide L.N. No. 22/66 and that you have thereby committed an offence punishable under section 72 of the Animals Ordinance No. 17/53."

Both pleaded guilty, were convicted by the magistrate, Jitra and fined $1 each.

Perlis L. N. 22 of 1966 made by the Menteri Besar, Perlis, in the purported exercise of the powers given to him under section 36(1) of the Animals Ordinance No. 17 of 1953 reads as follows: -

"Order Under section 36(1)

Whereas there is reasonable cause to believe that the disease known as swine fever exists amongst pigs in the district of Kota Setar, Mukim Kota Setar, in the State of Kedah. *As a matter of prevention* from its spreading into the State of Perlis:

Now, therefore, I, Tan Sri Sheikh Ahmad bin Mohd. Hashim, Menteri Besar, Perlis, in exercise of the powers conferred upon me by sub-section (1) of section 36 of the Animals Ordinance, 1953, hereby declare the State of Perlis to be infected area for pigs and prohibit the movement of pigs *and any part thereof* within, into or *out of* the aforesaid infected area except with the written permission of the State Veterinary Surgeon, Perlis, or such persons as he may authorise for this purpose."

The order above is in my view *ultra vires* the Animals Ordinance, 1953 for two reasons.

Section 36(1) of the Animals Ordinance reads as follows: -

"Whenever there is reasonable cause to believe that any disease exists amongst any animals or birds in any State or Settlement, the Menteri Besar of such State ..... may issue an order declaring such State or any part of such State to be an infected area and may in such order prohibit absolutely or conditionally the removal into or out of such area of any animals or birds or specified kinds of animals or birds."

The sub-section empowers a Menteri Besar to issue an order of this sort declaring any State of which he is Menteri Besar an infected area "whenever there is reasonable cause to believe that any disease exists amongst any animals...." in *such* State. The preamble to the Perlis L.N. 22 of 1966 clearly shows that there was reasonable ground to believe that the disease existed only among pigs in a district within *another* State, *i.e.* the State of Kedah; not in the State of Perlis.

Secondly the order purports to make it an offence to move not only pigs but "any part thereof" within, into or out of the infected area.

In section 2 of the Ordinance, "animal" is defined, unless the context otherwise requires as including "horses, cattle, sheep... of any age or sex". There is also a definition of "carcase" — "the dead body of an animal... and includes any part thereof".

I do not think that the context of this sub-section of an Ordinance penal in nature would justify me in extending the meaning of the word "animal" to include carcases of animals. Had the legislature intended to give a Menteri Besar powers to prohibit the moving of dead animals, it would have done so in expressed terms, as it has done in section 34(1) of the Ordinance which prohibits persons from moving or disposing of "any animal or bird deceased... or of the carcase of such animal or bird..." The word "animals" or "birds" in section 36(1) must therefore refer only to live animals or birds.

The subjects of this revision have therefore been guilty of no offence. The order of conviction made in the court below is accordingly set aside, the accused acquitted and discharged, and any fine paid by them should be refunded.

Conviction set aside.

KARUPPIAH CHETTIAR v. MOHAMED SHARJUDIN & ANOR.

[O.C.J. (Pawan Ahmad J.) September 25, 1970]

[Ipoh — Civil Suit No. 668 of 1968]

Land Laws — Transfer — Unregistered transfer of land — Private caveat lodged — Whether prevents registration of prohibitory order — National Land Code, 1965, s. 322(3).

One Subramaniam had purchased on November 8, 1968, 2/6th undivided shares in land from the defendant, who was the registered owner. A transfer was executed but it was not registered as the defendant failed to produce the document of title. On November 13, 1968 Subramaniam applied to the Registrar of Titles for the entry of a private *caveat* to protect